



April 6, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201
Via Email - Secretary@HHS.gov

Dear Secretary Azar:

The Lawyers' Committee for Civil Rights Under Law and the undersigned medical professionals write to express grave concern regarding the impact of COVID-19 on communities of color that have historically suffered from both health and economic disparities in this country. This Administration's alarming lack of transparency and data is preventing public health officials from understanding the full impact of this pandemic on Black communities and other communities of color. The Lawyers' Committee is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and vindicating the civil rights of African-Americans and other racial minorities.

We are concerned that Black communities are being disproportionately impacted by the pandemic, and have lower access to COVID-19 testing which may cause delayed care, an increased risk of high mortality rates, and the acceleration of the spread of the disease in our communities. The U.S. Department of Health and Human Services and its sub-agencies are charged with ensuring that racial disparities do not persist in the administration of healthcare services, even in a pandemic. The undersigned are united in our call to the U.S. Department of Health and Human Services (HHS) and its relevant sub-agencies, including the Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) to immediately *release daily racial and ethnic demographic data* related to COVID-19 testing, disease burden, and patient outcomes to: (1) better inform a robust public health response in the Black community; and (2) ensure COVID-19 tests are not being administered or withheld in a racially discriminatory manner.

Recent news articles and local health data indicate that African Americans in some cities and counties are being infected and dying from COVID-19 at higher rates than their white



counterparts. On April 1, the [Atlantic](#) reported that in Illinois, African Americans make up [14.6%](#) of the population, but [28%](#) of confirmed cases. On April 3rd, [Pro Publica](#) reported that in Milwaukee County, where the population is 26% Black, African Americans currently comprise “almost half of [the] County’s 941 cases and 81% of its 27 deaths.” In [Michigan](#), the state’s population is 14% Black, but African Americans currently make up 34% of the cases and 40% of deaths. And in [North Carolina](#), the state’s population is [22%](#) Black, but African Americans currently make up 36% of the cases and 25% of deaths from COVID-19. The data coming out of these local and state health departments is likely indicative of the disproportionate impact that Black communities are experiencing across the country.

The CDC is not currently publicly reporting racial or ethnic demographic data for [COVID-19 cases](#) or [tests performed](#) across the country. Yet, the CDC [requests](#) this critical information from health departments through the [COVID-19 Case Report Form](#) “to track the impact of the outbreak and inform public health response.” [ProPublica](#) noted that the CDC “tracks virulent outbreaks and typically releases detailed data that includes information about the age, race and location of the people affected.” However, it has not done the same for COVID-19. Relying on only some local and state health departments to publish race and ethnicity data for COVID-19 cases and outcomes is an ineffective way to holistically address the ways in which the pandemic is disproportionately impacting communities of color. The CDC must publicly report nationwide demographic data for COVID-19 tests, cases and outcomes to ensure that healthcare is being administered equitably across racial lines.

Wide-scale and swift access to COVID-19 testing is especially critical for Black Americans across socio-economic groups for several reasons. First, systemic racism and bias in the healthcare system have resulted in chronically poor health outcomes for Black Americans, including higher rates of asthma, [high blood pressure](#), heart disease, and [diabetes](#). These co-morbidities render Black Americans [more susceptible](#) to severe respiratory complications and death resulting from COVID-19. Inclusive testing practices would help ensure that symptomatic people receive timely care and treatment, and asymptomatic carriers do not continue to transmit COVID-19 to other vulnerable members of their communities.

Black communities also require easy access to testing because they are highly vulnerable to exposure to the virus. Many Black Americans and other communities of color simply do not have the privilege to remain “safe at home.” Only [20 percent](#) of Black workers are able to work from home, while almost a third of their white counterparts can do so.



People of color, and in particular [women of color](#) are overrepresented in low-wage jobs such as childcare and home health care. These groups on the frontline face a higher degree of risk exposure to COVID-19 through public-facing jobs, which have been deemed “essential.” Worse, many low-wage jobs [do not provide](#) employer-sponsored health insurance or paid leave, leaving this segment of the population with no real safety-net should they contract this deadly virus. While millions of lower-income women of color rely on Medicaid, many are [unable](#) to enroll in coverage because they live in states, primarily in the South and Midwest that chose not to expand Medicaid.

Black Americans face insurmountable barriers to testing and treatment for COVID-19. Private COVID-19 testing is costly, and government-administered testing is severely restricted. These barriers are exacerbated by the fact that racial minorities are suddenly uninsured, as they are overrepresented in recently shuttered industries, such as travel, retail, restaurant and hospitality. Between March 16 and March 30, nearly [10 million](#) people applied for unemployment benefits due largely to layoffs prompted by the coronavirus pandemic. Not surprisingly, these massive lay-offs have disproportionately impacted Black and Latinx workers. Without employment, there can be no employer-sponsored healthcare to offset the cost of COVID-19 testing. Moreover, people of color are about [twice as likely](#) to subsist on poverty-level wages, as compared to their white counterparts, and have fewer savings and resources to weather this crisis.

To be sure, healthcare providers that receive federal funding are bound to administer services in accordance with Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act, among other anti-discrimination statutes. Title VI prohibits healthcare providers from using federal funds to administer healthcare services that discriminate on the basis of race, color, or national origin. *See* 42 USC § 2000d. Title VI seeks to ensure that programs accepting federal money are not administered in a way that perpetuates the repercussions of past discrimination. *See* 45 C.F.R. § 80.3(b)(2)-(3)(proscribing healthcare activities that “[p]rovide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;” and “[s]ubject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program.”). Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability. Therefore, to effectively ensure the compliance of healthcare providers with respect to anti-discrimination statutes, HHS should collect, monitor, and disseminate racial data.



Accurate and transparent reporting of national race and ethnic demographic COVID-19 data will help public health officials and advocates determine whether marginalized communities of color are experiencing higher barriers to accessing testing, and higher rates of infection and mortality. The absence of this critical data on a national scale will severely hamper the ability to develop robust public health interventions responsive to the needs of communities of color. This data is also needed to help fully understand COVID-19, and to help stem ongoing community spread of this novel and dangerous virus. We urge you to work swiftly to coordinate with relevant agencies to immediately begin reporting on racial and ethnic demographic data, and to that end request a written response no later than April 20, 2020. If you have any questions, please contact Dariely Rodriguez, Director, Economic Justice Project at drodriguez@lawyerscommittee.org, or Dorian Spence, Director, Special Litigation at dspence@lawyerscommittee.org. Thank you for your time and consideration.

Signed

Kristen Clarke,
President and Executive Director
Lawyers' Committee for Civil Rights Under Law

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